LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAY 16 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 873

SHENANDOAH CORPORATION,
Petitioner

v.

E. FRANKLIN JACKSON, ETC.,
Respondent

BRIEF FOR RESPONDENTS IN OPPOSITION TO THE GRANTING OF PETITION FOR A WRIT OF CERTIORARI

BARRINGTON D. PARKER
1130 6th Street, N. W.
Washington, D. C.
Attorney for Respondents

GEORGE A. PARKER
1130 6th Street, N. W.
Washington, D. C.
Of Counsel for Respondents

WILSON - EPES PRINTING CO. - RE 7-6008 - WASHINGTON 1, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 875

SHENANDOAH CORPORATION,
Petitioner

v.

E. FRANKLIN JACKSON, ETC.,
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR RESPONDENT IN OPPOSITION

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent (Plaintiff then, Appellee below) prays that the petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in the above cause be denied.

OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia is reported in 298 F2d 324 and is included in the petitioner's brief.

JURISDICTION

Jurisdiction is invoked under provisions of 28 U. S. C. 1254.

This case is not reviewable on Certiorari by this Court under 28 U.S.C. 1254. It does not come within its purview.

QUESTION PRESENTED

Seeming inconsistency between Acts of Congress regulating real estate tax sales and conservatorships in the District of Columbia.

OTHER STATUTES INVOLVED

Title 21, Code of Laws for District of Columbia, 1950, Sections 502, and 504.

Title 47, Section 1007, set forth in the appendix hereto.

STATEMENT OF THE CASE

Mary Mason Jones, wife of William R. Jones, was the sole owner of premises numbered 1129 24th Street, N. W. at the time of her death on January 29, 1955. She devised, by the residuary clause of her will the property known as 1129 24th Street, N. W., to her husband.

The Respondent, E. Franklin Jackson, was appointed Conservator of the estate of William R. Jones by the United States District Court of the District of Columbia on the 22nd day of August, 1955. District of Columbia Code, Sections 21-503 (1951, Supplement VIII).

The Commissioners of the District of Columbia issued a deed to said premises conveying title to the petitioners on March 12th, 1959. On January 27th, 1960, the District Court authorized and directed the Conservator to sue the petitioners for redemption of this property, as provided for by the District of Columbia Code, Sections 21-503 (1951 Supplement VIII). The Respondent filed

suit on January 30th, 1960. The case was tried by the District Court, a Memorandum Opinion was filed January 19th, 1961 and the Final Judgment was entered February 7th, 1961. The Petitioner, (Appellant below), filed an appeal in the United States Court of Appeals and that Court in a Per Curiam decision on December 11th, 1962 affirmed the decision of the District Court and it is from the opinion of the Court of Appeals that the petitioner seeks the Writ of Certiorari.

REASONS FOR OPPOSING THE WRIT

The Court Should Refuse to Exercise Jurisdiction in This Cause as:

1. There is no inconsistency between the Acts of Congress authorizing the appointment of Conservatorships and the Act of Congress regulating Real Estate Tax Sales in the District of Columbia.

2. There is no conflict between any decision rendered by the Court of Appeals of the District of Columbia enforcing the Tax Sales Statute or the Conservatorship Statute of the District of Columbia.

This Court has traditionally refrained from reviewing the decisions of the Circuit Courts of Appeal where the decision rests upon purely local grounds, the cause lacks general importance and where there is no conflict in the decisions on similar facts. In *Layne* v. *Western Well Works*, 261 U.S. 387-393 (1923) a writ of certiorari issued to settle an alleged conflict of decision between two Circuit Courts of Appeal concerning the validity of a patent. The court granted the writ in the interest of obtaining uniformity but upon analysis of the alleged conflicting decisions, the court found them distinguishable on their facts. The court dismissed the writ as having been improvidently granted. On page 393 of the opinion the court stated:

> "If it be suggested that as much effort and time as we have given to the consideration of the alleged conflict would have enabled us to dispose of the case before us on the merits, the answer is that it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal".

The alleged conflict between the law relating to tax title and the right of redemption is no more conflicting than law and equity. This case is controlled by local D. C. laws, and the Court of Appeals merely followed the statutes. Any decision contrary to the interpretation of the statute for protection of persons under legal disability by the Court of Appeals would render the statute worthless.

In *Southern Power Co.* v. *North Carolina Public Service Co., et al*, 263 U.S. 508-509 (1923) a writ of certiorari was granted under the impression, induced by the petition, that a question of public interest is involved. The writ was dismissed when the argument revealed that the impression was erroneous. Mr. J. McReynolds delivered the opinion and said in part:

> "This writ must be dismissed. The petition therefore stated that the cause involved a grave question of vital importance to the public, and alleged as a special reason for its re-examination that the decree would deprive petitioner of property without due process of law and of freedom to contract, contrary to the Federal Constitution. The argument developed that the controverted question was whether the evidence sufficed to establish actual dedication of petitioners' property to public use—primarily a question of fact. That is not the ground upon which we granted the petition and if sufficiently developed would not have moved us thereto."

The alleged seeming inconsistency petitioner alludes to in question (1) exists only in the mind of the petitioner. It is without merit and is introduced as a pretext of inducing this Court to grant this writ, where no genuine ground for so doing exists. This petition does not come within the purview of 28 U.S.C. 1254(c).

This Court has traditionally followed the doctrine laid down in these cases as well as in the following cases:

> The United Surety Co. v. American Fruit Product Co., 238 U.S. 140; American Security and Trust Co. v. District of Columbia, 224 U.S. 491; District of Columbia v. Pace, 320 U.S. 698; Del Vecchio v. Bowers, 296 U.S. 280.

This is not a case invoking principles, the settlement of which is of importance to the public as distinguished from that of the parties, nor is there a real and embarrassing conflict of opinion and authority between or among the circuits.

The petition for the writ of certiorari completely fails to present a case which calls for the issuance of the writ.

All of petitioner's so called "questions presented" are frivolous and without judicial merit and fail to bring the petition within the purview of the jurisdiction of this court conferred by 28 U.S.C. 1254.

The alleged seeming inconsistency between Act of Congress regulating real estate tax sales and conservatorships in the District of Columbia indicates a confusion in the thinking of the petitioner, rather than an inconsistency between the statutes. His brief is entirely void of any substantial reason or ground in support of his contention. It deals with other matters governed by the District of Columbia Code, facts decided by the District Court and affirmed by the Court of Appeals, but it is woefully deficient in dealing with the alleged statutory inconsistency.

CONCLUSION

It is respectfully submitted that the petition for the Writ of Certiorari fails to present a question which brings it within the jurisdictional grant in 28 U.S.C. 1254; that it is frivolous, without merit and should be denied.

Respectfully submitted,

BARRINGTON D. PARKER
1130 6th Street, N. W.
Washington, D. C.
Attorney for Respondent

GEORGE A. PARKER
1130 6th Street, N. W.
Washington, D. C.
Of Counsel for Respondent

APPENDIX

Other Statutes involved:

District of Columbia Code (1950 Edition)

Title 21—Section 502:

"Upon a finding that the person for whom the conservator is sought is incapable of caring for his property, the court shall appoint a conservator who shall have charge and management of the property of such person subject to the direction of the court."

Title 21—Section 504:

"The court shall have the same powers with respect to the property of any person for whom a conservator has been appointed as it has with respect to the *property of infants under guardianships*".

Title 47—Section 1007:

"The said commissioners shall not convey any property sold for taxes if they shall discover, before the conveyance, that the sale was for any cause invalid and ineffectual to give title to the property sold; but they shall cancel the sale and cause the purchase money, together with interest at the rate of six per centum per annum, and the surplus, if any, to be refunded to the purchaser, his representatives or assigns; PROVIDED, That if any conveyance made by the said commissioners, of property sold for taxes, shall at any time be set aside by decree of any court as invalid, the party in whose favor the decree is rendered shall pay to the party holding such conveyance, his heirs or assigns, the amount paid for such taxes and conveyances, together with interest at the rate of six per centum per annum.